



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: G.E. Calma Company

File: B-227974

Date: August 24, 1987

DIGEST

Protest that the agency did not conduct adequate discussion prior to requiring the submission of revised proposals is dismissed as untimely where the protest was not filed prior to the closing date for receipt of revised proposals.

DECISION

G.E. Calma Company protests the alleged failure of the U.S. Army Tank-Automotive Command, Warren, Michigan, to conduct meaningful discussions with Calma regarding the proposal submitted by the firm under request for proposals (RFP) No. DAAE07-86-R-Q038. We dismiss the protest as untimely.¹

The RFP was for a computer-aided, design, engineering and manufacturing system in connection with which the contractor will be required to provide software. With its proposal Calma submitted a proposed software license agreement. Clause 10 of that proposed agreement, entitled "Limitations of Liability," provided that the extent of the contractor's liability for all claims of any kind relating to the contractor's performance or breach of the contract would be limited to the fee allocable to the licensed software that gave rise to such claims. If an allocation could not be made, the contractor's liability would be limited to the price of the system with which the software had been furnished. Clause 10 also listed a number of specific damage claims for which contractor would not be liable in any event.

¹/ Our Bid Protest Regulations, 4 C.F.R. § 21.3(f) (1987), provide that we will dismiss a protest whenever the propriety of the dismissal becomes clear. Here, prior to submitting a report on the merits of Calma's protest, the Army requested dismissal of the protest and provided documents in support of this position. We solicited and received Calma's comments regarding the request.

By letter dated May 26, 1987, the agency informed Calma that it had reviewed the proposed software license agreement and had found it to be unacceptable, in part based on the language of clause 10. The letter cited possible conflicts with solicitation requirements concerning liquidated damages for late delivery (solicitation paragraph F14) and "downtime costs." According to the protester, negotiations between the Army and Calma regarding the proposed software license agreement continued through May and June.

By letter of July 1 the Army informed the offerors that it was formally requesting revised proposals. The agency listed a number of areas in each offeror's proposal that would require revision. With respect to Calma, the agency specifically instructed the firm to remove from its proposal the exceptions taken to solicitation paragraph F14. The letter stated that revised proposals were due by 3:00 p.m. on July 9 and that failure of any offeror to submit a revised proposal by that time would result in rejection of the proposal. The letter concluded by noting that this was not a request for a "best and final price quote."

Calma did not submit a revised proposal.^{2/} Rather, on July 22, Calma filed a protest with this Office complaining that the agency had not conducted meaningful discussions concerning the proposed software license agreement and its Limitations of Liability clause. The protester also argued that the liquidated damages provision of the solicitation, clause F14, could lead to unconscionable results. The agency contends that this protest is untimely. We agree.


Our Bid Protest Regulations provide that protests based on alleged solicitation improprieties that arise after the closing date for receipt of initial proposals must be filed not later than the next closing date for receipt of proposals. See 4 C.F.R. § 21.2(a)(1) (1987); Wabash DataTech, B-224550, Feb. 11, 1987, 87-1 CPD ¶ 149. Therefore, if Calma believed that the negotiations concerning its initial proposal prior to the agency's call for revised proposals had not been adequate, it should have raised its objections prior to the next closing date, July 9.

In any event, the record indicates that the parties in fact discussed both Calma's proposed software license agreement, including its Limitations of Liability clause (clause 10), and the liquidated damages provision of the RFP (clause F14). While Calma has argued at some length that

^{2/} The Army subsequently awarded a contract to another firm.

these two provisions are very different and that therefore discussions on RFP clause F14 are not the same as discussions on Calma's clause 10, both provisions attempt to define the extent to which the contractor will be liable for damages arising from contract performance. That the two provisions may be different merely reflects the fact that the parties do not agree on this issue. By its letter of July 1, the agency informed the protester that it expected Calma's offer to conform to the requirements of clause F14 of the RFP, in effect rejecting the alternative proposed by Calma. Any objections Calma had to clause F14 of the RFP should have been raised prior to the closing date for receipt of initial proposals, but certainly no later than the next closing date.

Since Calma did not file its protest prior to the July 9 due date for receipt of its revised proposal, its protest is untimely. Sigma West Corp., B-226455, Mar. 24, 1987, 87-1 CPD ¶ 339. Calma has requested that we convene a conference to discuss the merits of its protest, but no useful purpose would be served by such a conference. See Scientific Systems, Inc., B-225574, Jan. 6, 1987, 87-1 CPD ¶ 19. The protest is dismissed.


for Ronald Berger
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General Counsel